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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION TWO

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IN RE THE RESTRAINT OF:

BRADLEY DAVID KNOX,

Petitioner.

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PERSONAL RESTRAINT PETITION

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Judgments in Cowlitz County Superior Court  
No. 14-1-00095-0  
No. 14-1-01283-4  
The Hon. Michael Evans, Presiding

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NEIL M. FOX  
WSBA No 15277  
Law Office of Neil Fox, PLLC  
2125 Western Ave., Suite 330  
Seattle WA 98101

Phone: 206-728-5440  
Email: [nf@neilfoxlaw.com](mailto:nf@neilfoxlaw.com)

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**A.     STATUS OF PETITIONER**

Petitioner Bradley David Knox applies for relief from restraint as defined in RAP 16.4(b). Mr. Knox challenges convictions and sentences from two Cowlitz County Superior Court judgments: (1) No. 14-1-00095-0: VUCSA delivery (with school zone and firearm enhancements), two counts of unlawful possession of a firearm in the first degree, and one count of bail jumping, and (2) No. 14-1-01283-4: Solicitation to commit first degree murder.<sup>1</sup> The Hon. Michael Evans was the judge assigned to both cases.

Mr. Knox is currently incarcerated at the Washington State Penitentiary in Walla Walla, Washington (DOC No. 266401), serving determinate sentences of 300 months for No. 14-1-01283-4 and 156 months for No. 14-1-00095-0, the two judgments running concurrently with the exception of the enhancements in 14-1-00095-0. Copies of the two judgments entered on December 24, 2015, can be found at Ex. 1 at 112-23 and at Ex. 3 at 176-87. Mr. Knox appealed the convictions, but this Court

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<sup>1</sup> These two cases were joined for trial. Ex. 1 at 26-27; RP 30-34. Separate notices of appeal were filed. COA Nos. 47473-1-II and 48476-5-II. This Court consolidated the two cases on February 10, 2016. Under RAP 16.4(b), Mr. Knox is under restraint due to the court decisions in these consolidated cases, and files one petition to contest the judgments in both cases.

Pertinent documents are filed under separate cover, by exhibit, with continuous pagination. Mr. Knox will file a separate motion to transfer the verbatim report of proceedings from the direct appeal to this case. RAP 16.7(3).

affirmed the convictions in an unpublished opinion, *State v. Knox*, COA No. 48473-1-II (consolidated with 48476-5-II) (June 13, 2017). Ex. 4 at 190-96. This Court denied reconsideration on July 17, 2017. Ex. 4 at 197. Mr. Knox filed a petition for review, but the Supreme Court denied review on December 6, 2017 (Sup. Ct. No. 94885-2). Ex. 4 at 198. The mandate issued on December 22, 2017. Ex. 4 at 199.

This PRP is being filed within one year of the issuance of the mandate and is timely under RCW 10.73.090.

Mr. Knox has not filed any other petitions for post-conviction relief related to these convictions, and thus there are no issues related to successor petitions. Mr. Knox's sentences are solely for the above-noted Cowlitz County cases, and he has no other sentences to serve when he completes the sentences.

**B. JURISDICTION**

This Court has jurisdiction under article IV, section 30 of the Washington Constitution, RAP 16.3(c) and RAP 16.5(a).

**C. STATEMENT OF GROUNDS FOR RELIEF**

**1. Introduction**

Now over 63 years old and suffering from a variety of physical and mental health ailments, Mr. Knox is serving decades in prison based upon allegations that, while he was an inmate at the Cowlitz County Jail, he solicited long-time informant Otis Pippen to kill Steven Walker – No. 14-1-01283-4. The State’s theory was that Mr. Knox wanted Pippen to kill Walker because Walker’s girlfriend, Cassandra Crimmins, was a defense witness in Mr. Knox’s VUCSA case – No. 14-1-00095-0. The VUCSA case arose out of a police raid of commercial property at 909 California Way in Longview on January 17, 2014, a raid where the police found drugs and guns in a motor home parked on the property and also in a storage building.

The State’s theory made no sense because in fact Crimmins had accepted responsibility for the drugs and guns in the RV and admitted responsibility to Mr. Knox’s lawyers, and Mr. Knox really had no reason to harm Mr. Walker. In addition to not making sense, the convictions are marred by a combination of *Brady*<sup>2</sup> violations, conflicts of interest and ineffective assistance of counsel.

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<sup>2</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963).

Most importantly, the State withheld evidence from the defense that Otis Pippen – the main witness in the solicitation case – was a suspect in two recent sex cases in Cowlitz County – one involving allegations that Pippen raped an adult female (L14-105, L14-107); the other involving allegations that he molested a young girl (L15-401). Ex. 18 at 355-76; Ex. 20 at 382-418. In one case (L14-105/L14-107), the lead detective (Longview Police Department Det. B.J. Mortensen) was the very same detective who worked on both the drug and solicitation cases against Mr. Knox. In the other case (L15-401), the prosecutor involved in the investigation (Cowlitz County Prosecuting Attorney's Office Chief Criminal Deputy Tom Ladouceur) had actually represented Mr. Pippen a few months earlier, as a public defender, when Pippen decided to testify against Knox regarding the alleged solicitation. In a case involving the credibility of witnesses, the intentional withholding of evidence that Pippen was a suspect in two recent sex cases (along with other withheld evidence) requires vacating the two judgments and either remanding for a new trial or dismissal.

The *Brady* violations in this case are serious enough to justify on their own granting relief, but the *Brady* violations should be seen in conjunction with the pervasive conflicts of interest that infected this case. In particular,



the firm that represented Mr. Knox, the Cowlitz County Office of Public Defense (“OPD”), also represented Christian Sullivan, who was convicted of VUCSA for other drugs and guns at the same time as the January 17, 2014, raid at 909 California Way. Mr. Knox’s theory at trial in part was that Mr. Sullivan, OPD’s other client, was an “other suspect” and that he was the one who owned the same drugs and guns found in the RV owned by Mr. Knox. Additionally, there was an incredibly tangled web of other conflicts involving the small number of defense lawyers, prosecutors and judges in Cowlitz County.

Either on their own or in conjunction with a series of other errors, Mr. Knox’s convictions in these two cases should be set aside. The extensive combination of errors cumulatively caused Mr. Knox severe prejudice and justifies relief.

**2. Facts Upon Which Unlawful Restraint is Based**

**a. *VUCSA Case (14-1-00095-0)***

On January 17, 2014, officers with the “Street Crimes Unit” of the Longview Police Department (“LPD”), led in part by Det. Benjamin Joseph (“B.J.”) Mortensen, raided property at 909 California Way in Longview, Washington. The property contained a motor home, owned by Mr. Knox,

and a storage building, eight to fifteen feet away, containing a loft area where Christian Sullivan resided. In the motor home, the police found two handguns, cellphones, plastic bags, a glass smoking pipe with residue, a digital scale, and items of dominion and control with Knox's name on them. They found two baggies with a small amount of methamphetamine in the main area of the motor home (one in the freezer door) and another baggy with another small amount in the bedroom. RP 399-09, 413-14, 426-28, 481-82, 486-88. The total amount of methamphetamine actually tested (what was found in the freezer door) weighed 27.4 grams. RP 481-82, 544 By information, the State charged Mr. Knox with possession of methamphetamine with intent to deliver (with firearm and school zone enhancements) and two counts of felon in possession of a firearm. Ex. 1 at 5-7

Prior to the search, the police observed Mr. Knox observed leaving the property in a vehicle. The police stopped the vehicle, driven by Curtis Stone, and arrested Knox, who had \$2405 in currency on his person, but no drugs. Knox allegedly admitted he lived at the motor home, allegedly told an officer where and how much meth there would be inside, and allegedly said he was a "lower-end dealer" and needed a firearm to protect against

robberies. RP 400-02, 424-25, 457, 462-63, 475-82. However, according to Det. Seth Libbey, Knox spoke in a "cryptic" fashion, essentially stating that the "last time he had seen" the drugs they were in the freezer. RP 485.

Mr. Knox testified that he never admitted ownership of the methamphetamine and guns, and actually said he used drugs, but did not sell them. He testified that, although he owned the motor home and kept property there, he actually resided in a trailer park in Kelso with Curtis Stone. RP 752-61, 798-811. Mr. Knox's son verified his father lived with Stone, not at the motor home. RP 724-30. Knox testified that Christian Sullivan lived in the storage building near the motor home, that a woman named Cassandra Crimmins would stay there too and told him that she had a gun, that Sullivan and others who visited would use the motor home's bathroom (since the storage building did not have its own bathroom) and that many other people hung out at the motor home and did drugs. RP 488-89, 753-61, 798-811. Notably, when arrested, while Mr. Knox had the key to the motor home, he did not have the key to enter the fenced area surrounding the property, and officers had to use bolt-cutters to gain access. RP 402, 425-26, 478.

While the police were searching 909 California Way, they detained Christian Sullivan in a nearby vehicle. He had methamphetamine on his

person. The police also found firearms (including one that was stolen) in a loft area of the storage building tied to Sullivan. Knox had told them that Sullivan was a drug dealer. RP 410-12, 484. As a result, Mr. Sullivan was charged and pled guilty to VUCSA and firearm charges in Cowlitz County No. 14-1-00097-6.<sup>3</sup> The guilty plea was entered on April 21, 2014, and Sullivan was sentenced on August 26, 2014. Mr. Sullivan's attorney was Thad Scudder at OPD. Ex. 24 at 512, 516-38.

On one occasion, another attorney in Scudder's office, Joshua Baldwin, appeared in court in Mr. Sullivan's case to ask for a continuance. Ex. 24 at 550; Ex. 25 at 599 (8/19/14). Mr. Scudder did not file a notice of withdrawal after Sullivan was sentenced, and Mr. Scudder's name appears on a restitution order that was filed on October 27, 2014. Ex. 24 at 539. Sullivan went on to commit additional crimes in 2014 and 2015, and was variously represented by Mr. Scudder, and a private attorney, with a contract to handle public defense conflicts, Kevin Blondin. Ex. 25 at 560-603; Ex. 26 at 604-21.

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<sup>3</sup> Initially, there was a second superior court case involving Mr. Sullivan's involvement in the events of January 17, 2014, Cowlitz County Superior Court No. 14-1-00110-7, but the matters were ultimately charged only under 14-1-00097-6. Ex. 24 at 553-59.

At the same time that the police detained Mr. Sullivan, they also arrested Robert Sidney Tubbs, who was in the car with Sullivan. Tubbs was later charged and convicted for VUCSA in Cowlitz County Sup. Court No. 14-1-00096-8 for possession of methamphetamine as a result of what was found at the time of this arrest. Ex. 27 at 635-36, 642-43, 647-48, 650-73. Mr. Tubbs' was also assigned a lawyer at OPD. Ex. 27 at 639, 644. Initially, his attorney was Ryan Jurvakainen, but, in July 2014, Mr. Jurvakainen withdrew from representing Mr. Tubbs due to a conflict (presumably OPD's representation of Sullivan). Ex. 27 at 645-46. Mr. Tubbs' defense presumably would be in conflict with the others as Tubbs' address was listed on the police report as "transient," Ex. 27 at 678, and thus his association with Sullivan and 909 California Way would make him another suspect for the drugs and guns found at that location.<sup>4</sup>

In November 2014, Mr. Jurvakainen won the election to become Cowlitz County Prosecuting Attorney, and he assumed office in January 2015, taking public defender Tom Ladouceur with him as his chief criminal deputy. Ex. 34 763-66. Both Jurvakainen and Ladouceur filed forms in Mr. Knox's cases stating that because they or others in their former public

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<sup>4</sup> Mr. Tubbs subsequently passed away. Ex. 27 at 674-77.

defense firm had represented Knox, they would not be involved in prosecuting his cases, noting that they would be screened from the cases and that DPA Jason Laurine would be the final decisionmaker.<sup>5</sup> Nonetheless, pleadings continued to be filed in Mr. Knox's cases under the signature or on the letterhead of Mr. Jurvakainen, including subpoenas, jury instructions and legal memoranda. Ex. 1 at 13, 14, 28-31, 40; Ex. 3 at 152, 164, 165-66, 167-70, 171-72.

Mr. Knox was initially represented in the VUCSA case by a public defender, Joshua Baldwin. However, because Mr. Sullivan was represented by Mr. Scudder, who was in the same office, a few weeks after Baldwin was assigned the case, he withdrew due to a conflict of interest. Ex. 1 at 8-9, 124-25. Mr. Baldwin wrote to Knox and informed him of this conflict. Ex.

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<sup>5</sup> Ex. 1 at 18-19 & 24-25 (Ladouceur's 3/24/15 & 5/4/15 declarations filed in 14-1-00095-0); Ex. 2 at 131-34 (Ladouceur's and Jurvakainen's 3/24/15 declarations filed in 14-1-01040-8); Ex. 3 at 146-49 (Ladouceur's and Jurvakainen's declarations filed on 3/24/15 and 5/7/15 in 14-1-01283-4). Mr. Jurvakainen did not file a similar declaration in 14-1-00095-0, the case where he briefly represented Mr. Tubbs before withdrawing due to a conflict of interest. Notably, no such screening declarations from either Mr. Jurvakainen or Mr. Ladouceur appear in Otis Phippen's 2014 VUCSA file. Ex. 15 at 303-45.

32 at 755, 759. Conflict attorney Kevin Blondin took over the case, on February 4, 2014. Ex. 1 at 125; Ex. 33 at 761.<sup>6</sup>

Mr. Blondin represented Mr. Knox until October 16, 2014, at which time he withdrew and Mr. Baldwin took the case over again. Ex. 1 at 126. Mr. Baldwin told the judge that he would have to do a conflict check. Ex. 38 at 782. It is not clear if that took place because Mr. Baldwin continued to represent Knox on the drug case until he left the public defender's office and passed the case to Simmie Baer, who had recently been hired at OPD. Ex. 32 at 756. At least on one occasion, on March 3, 2015, Thad Scudder (Christian Sullivan's attorney) appeared in court on behalf of Mr. Knox on the VUCSA and solicitation cases (standing in for Mr. Baldwin). Ex. 1 at 127; Ex. 3 at 188. Ms. Baer tried the case to a jury in October 2015.

At trial, Ms. Baer tried to introduce evidence that the drugs and guns found in the motor home were actually owned by "another suspect" – her office's other client, Christian Sullivan. Ex. 3 at 16-63. She proffered Mr. Sullivan's guilty plea statement and judgment as evidence, subpoenaing the court clerk to set the foundation for these documents. RP 361-64; Ex. 31 at 751-53. Ms. Baer had interviewed Mr. Sullivan at Stafford Creek

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<sup>6</sup> Mr. Baldwin continued to represent Mr. Knox on another VUCSA case from 2013, which was later dismissed. Cowlitz County Sup. Ct. No. 13-1-01363-8.

Corrections Center in June 2015. However, she did not call Sullivan as a defense witness because he claimed to her that all the drugs belonged to Mr. Knox. Ex. 30 at 750. At trial, Judge Evans allowed evidence regarding the other drugs and guns found in the storage building, purportedly related to Sullivan, he excluded Sullivan's guilty plea form and judgment. RP 366-67. The jury returned guilty verdicts to all counts connected with the VUCSA case. Ex. 1 at 79-84.

On the last day of the trial, a woman dropped off at Ms. Baer's office a folder containing a declaration signed Cassandra Crimmins. In the declaration, dated May 5, 2014, Crimmins took responsibility for ownership of the drugs and guns found in the motor home. RP 1068; Ex. 1 at 86-89; Ex. 30 at 748.<sup>7</sup> Ms. Baer had known from prior counsel that Ms. Crimmins had at various times taken responsibility for the drugs and guns in the motor home,<sup>8</sup> but despite many attempts to locate her, Ms. Baer was unable to subpoena her to court for trial. Ex. 30 at 748; RP 1068-70. After the trial, Ms. Baer located Ms. Crimmins in jail. She spoke to Crimmins in person,

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<sup>7</sup> The packet apparently contained prior versions of the statement. The one submitted with Ms. Baer's new trial motion is at Ex. 8 at 217. The other versions are at Ex. 8 at 218-21.

<sup>8</sup> At the time that Mr. Blondin represented Mr. Knox, he spoke with Ms. Crimmins but did not take any statements from her. Ex. 33 at 761.



who verified the veracity of her written statement. Ex. 30 at 748; RP 1067-68.<sup>9</sup> Ms. Baer filed a motion for a new trial, claiming newly discovered evidence. Ex. 1 at 86-89.

Ms. Crimmins' statement admitting responsibility was important because the State cross-examined Mr. Knox about his attorney's announcement that Ms. Crimmins would testify at trial, the allegation that he actually paid Crimmins \$8000 to testify for him and that she and her boyfriend, Steven Walker, took the money and bought a truck, and the fact that Crimmins and Walker "didn't show up to testify." In response to this cross-examination, Knox asked, "Was there something I could see to see where I said that?"; he denied paying Crimmins money and stated that when

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<sup>9</sup> Det. B.J. Mortensen claimed he interviewed Crimmins in the jail in March 2015 (without giving a date). Mortensen failed to document his interview with Crimmins properly, and only wrote a report months later, in July 2015, when he claimed that Crimmins told him that Knox had paid her \$20,000 to write out a statement admitting responsibility. Ex. 9 at 222-24.

In March 2015, Crimmins was facing her own serious charges – she was arrested on March 10, 2015, and charged with arson. She was initially held in jail on \$20,000 bail. At arraignment, Kevin Blondin was appointed to represent Crimmins, and she pled guilty to malicious mischief in the first degree on March 24, 2015. Ex. 12 at 24-67. Thus, at the time that Mortensen claimed he spoke to Crimmins in the jail, Crimmins' lawyer, Mr. Blondin, essentially had a conflict of interest as he had spoken to Crimmins about taking responsibility for the drugs and guns when he was representing Mr. Knox. Ex. 33 at 761-62. It is not clear how Mr. Blondin could have advised Crimmins about what to say to Det. Mortensen given his prior involvement as Knox's attorney.

he met Walker, he already had a truck, “so I don’t know where you guys are coming up with this stuff.” RP 838-40.

Both Crimmins and Walker were available to the State during Knox’s trial. Crimmins was actually in the Cowlitz County Jail for a portion of Knox’s trial, Ex. 1 at 93, 97-99, 101, while Walker was in the custody of the Department of Corrections, having been sentenced on September 29, 2015, to 51 months in prison. Ex. 29 at 730-742. Neither the State nor the defense called Crimmins or Walker as witnesses at Knox’s trial. The State also never introduced evidence to tie up its impeachment (1) that Mr. Knox’s attorney announced that Crimmins would be a witness, (2) that Knox actually paid Crimmins \$8000, (3) that Crimmins and Walker used the money to buy a truck, or (4) that Crimmins did not show up to court at any particular hearing.

Judge Evans denied the motion for a new trial, ruling that although Ms. Crimmins’ testimony was “material,” Knox’s attorney, Ms. Baer, was not diligent in trying to locate her, having not used a private investigator to try to find her and subpoena her prior to trial. Judge Evans did state that Ms. Baer “did all within her power to find Ms. Crimmons [sic], including attending hearings and following up on phone numbers that were given to her from Mr.

Knox and others and also house locations and going the extra effort there.” RP 1083-85; Ex. 1 at 108-11. While Ms. Baer did not use an investigator, she did her own investigation and attempted to locate Ms. Crimmins (and other witnesses) herself. Ex. 30 at 748.

**b. *Bail Jumping Charge (14-1-00095-0)***

After Mr. Knox was charged in No. 14-1-00095-0, he posted bail. However, he missed court one time on May 5, 2014, although he appeared on May 7, 2014. RP 517-23. As a result, the State added a “bail jumping” charge to the original case number. Ex. 1 at 10-12. Mr. Knox was convicted of this count. Ex. 1 at 85.

**c. *False Imprisonment Case (14-1-01040-8)***

In No. 14-1-01040-8, the State charged Mr. Knox with the false imprisonment of Haley Crookshanks. Ex. 2 at 129-30. Ms. Crookshanks was a drug addict who met Mr. Knox in August of 2014. Mr. Knox bought her shoes and some other personal items, and took her back to the trailer park where he was living at in Kelso (Curtis Stone’s trailer). There Crookshanks did drugs and broke Mr. Knox’s new phone. The next day, Knox was driving with Crookshanks in his Jeep, and the two got into a dispute. Knox believed that Crookshanks had stolen his cell phone and was trying to steal his

backpack. Crookshanks claimed that Knox was mad at her for not having sex with him. RP 636-57, 762-79. This charge was tried along with the other cases, but the jury found Mr. Knox "not guilty." Ex. 2 at 135.

d. *Solicitation Case (14-1-01283-4)*

When Mr. Knox was charged with false imprisonment, he was jailed pending trial. After he was beat up by another inmate, he was housed in the Cowlitz County Jail's medical unit. Otis Pippen Jr. was in the same unit. RP 780-81; Ex. 37 at 776. Mr. Pippen had an extensive criminal history, and was a failed police informant who had unsuccessfully tried to work off a series of drug and theft charges. Det. B.J. Mortensen was his "handler," and Pippen was facing a return to prison because he failed to fulfill his "contract." He continued to use drugs while he was supposed to be working for the police, and he was charged with a series of crimes (as well as having an uncharged felony theft over his head). RP 554-55, 564-70, 599-602; 618, 621-29; Ex. 15 at 303-23.

Looking at a way to avoid prison, in September 2014, Pippen told his lawyer, public defender Tom Ladouceur,<sup>10</sup> that he had information that he could trade in exchange for dismissal of his own cases. Pippen claimed that

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<sup>10</sup> Mr. Ladouceur had a prior professional relationship with Pippen, as he handled Pippen's 2012 probation violation hearings. Ex. 14 at 300-02.

Mr. Knox had approached him in the jail and solicited him to kill Ms. Crookshanks, Ms. Crimmins and her boyfriend, Steven Walker. RP 602-08. At trial, however, Mr. Knox testified that it was Pippen who initiated the contacts, and it was Pippen who continually approached him “out of the blue” and raised the subject of killing people. RP 783-89.

Because Mr. Ladouceur worked in the same office as Mr. Baldwin, who was currently representing Knox on the unlawful imprisonment charges regarding Ms. Crookshanks and the 2013 drug case,<sup>11</sup> Ladouceur withdrew as Pippen’s lawyer. Ex. 15 at 323; Ex. 39 at 786-90; Ex. 41.<sup>12</sup> There was no general screening mechanism set up in the public defender’s office, Ex. 32 at 756, so there were no procedures in force to have prevented Ladouceur and Baldwin (whose offices were apparently next to each other, Ex. 30 at 747) or other lawyers in that office from sharing information about their cases with each other, before or after Ladouceur withdrew.

Attorney Bruce Hanify was assigned to represent Pippen. Ex. 15 at 323-26; Ex. 39 at 788. Mr. Hanify had been at the public defender’s office

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<sup>11</sup> Mr. Blondin was still representing Mr. Knox on the 2014 drug case at that point.

<sup>12</sup> The actual motion and order to withdraw (Ex. 41) is sealed in the trial court, and thus will be filed separately along with a motion to seal.

and even though his name continued to appear on the firm's letterhead in 2014 (at the same time Knox was represented by that firm), Ex. 32 at 759, Hanify had apparently left the public defenders and was in private practice. Possibly with Hanify's assistance,<sup>13</sup> Pippen entered into an oral agreement with the State by which the drug and theft charges against him would be dismissed or not filed, and he would wear a wire in the jail with the goal of getting Mr. Knox on a recording asking him to kill people. RP 556-57, 620, 674.<sup>14</sup> Mr. Pippen was released from jail in his own case, RP 561,<sup>15</sup> and, ultimately, after Mr. Knox's trial, on February 1, 2016, the pending charges against Pippen were dismissed. Ex. 15 at 343-45.

Pippen wore a wire on October 6, 2014, but the police claimed that it was "unusable." RP 577. *See also* RP 558-60. As one detective explained, "There's a lot of ambient noise within the pod and the verbals were not

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<sup>13</sup> Hanify's role is not clear – there was no written agreement documenting the terms of Pippen's cooperation, and Hanify does not appear to have been present during any of the interactions between Pippen and the police.

<sup>14</sup> The recording was authorized by a judge pursuant to RCW 9.73. Ex. 7 at 213-15. The affidavit that supported this order (1) is not in the files of Mr. Knox's former attorneys, and (2) was apparently destroyed by the court. Counsel is waiting to obtain a copy from the prosecutor's office through the PRA process. Ex. 40 at 794.

<sup>15</sup> The record is unclear as to exactly how Mr. Pippen was released from custody as there does not appear to have been a judicial order releasing him or the posting of bail.

coming through very well. It's very difficult to understand anything. . . . I don't recall anything that was significant, any kind of language that we could hear or anything specific." RP 587-88.<sup>16</sup> In one report, Sgt. Hartley stated that "During this interaction between the CI and Knox there was a brief conversation about the subject matter of this case however statements made by Knox were sketchy at best due to the high volume of ambient noise in the jail's 'G' pod." Ex. 6 at 212. The State did not turn the "sketchy" recording over to the defense, and it is not clear what happened to the recording as it was not introduced at trial. Ex. 30 at 745.

On October 8, 2018, Pippen wore a wire again, and the two had conversation about Pippen killing three people -- Haley Crookshanks, Cassandra Crimmins and Steven Walker-- in exchange for payment of money or drugs. Mr. Knox would constantly change his mind, however, and would make contradictory statements like expressing his concern that he did not want people killed and did not want Pippen to do anything that would result in him getting in trouble. RP 578-83, 589-96, 612-17, 632-33, 665-77.

While the State's theory that Knox would want to prevent Crookshanks from coming to court made a modicum of sense, the State's

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<sup>16</sup> Pippen testified that he actually wore a wire three (not two) times. RP 610-11. It is unclear what happened to the third recording.

theories regarding Crimmins and Walker did not make sense at all.<sup>17</sup> Purportedly, Mr. Knox had given money to Ms. Crimmins to admit that the drugs and guns found in the motor home on January 17, 2014, were hers. In fact, as noted, Ms. Crimmins had taken responsibility for the drugs and guns, Knox's lawyers knew that she had done so, and Knox himself knew it. Ex. 8 at 217; Ex. 32 at 756-57; Ex. 33 at 761-62; Ex. 37 at 778. The fact that Ms. Baer could not locate Crimmins at the time of Mr. Knox's trial (in October 2015) cannot possibly have any bearing on Mr. Knox's supposed solicitation of Mr. Pippen a year earlier (in September and October 2014) to kill Crimmins and Walker. Thus, it is not clear why Mr. Knox would want Crimmins dead.

As for Mr. Walker, he was another addict who apparently was Ms. Crimmins' boyfriend. He too had an extensive criminal history and was represented on various occasions by lawyers in the public defender's office, including Mr. Scudder in 2006 and Richard Suryan for part of 2015. Ex. 28 at 679-701; Ex. 29 at 703-10. It is not completely clear why Mr. Knox would

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<sup>17</sup> And, of course, Mr. Knox was someone with very little in the way of funds as he could not even post bail to get out of jail and had a public defender. RP 788.



want Mr. Walker dead as he had nothing to do with any of his cases.<sup>18</sup> As noted, the State cross-examined Mr. Knox about the theory that he supposedly paid Ms. Crimmins \$8000 to accept responsibility for the guns, and that she and Mr. Walker did not show up at some unknown hearing to testify but instead bought a truck. RP 839-40. Again, when Knox denied this allegation, the State did not call either Walker or Crimmins as rebuttal witnesses.<sup>19</sup>

At times on the second recording, Mr. Knox did say things about killing people, but he testified he did not want anyone to die; he was under a lot of mental health strains in the jail, and was just giving in to Pippen's constant badgering – he wanted the witnesses to come in and tell the truth. RP 751, 784-97, 842-52. Mr. Knox testified that Pippen had followed him around the jail for weeks, haranguing him. RP 849 (“I couldn't get away from him. It's a small 40 x 40 cells, he followed me around” and that he would yell

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<sup>18</sup> Pippen and Knox had very confused conversations about killing Walker, but not Crimmins, with Knox stating at times that “didn't want her killed now but to kidnap her and to murder her boyfriend as a way to motivate her to testify and also kidnap her child as well.” RP 595. Yet, Crimmins never expressed an unwillingness to testify, so the statements really are nonsensical.

<sup>19</sup> At one point during the State's cross of Mr. Knox, the prosecutor “testified” by stating: “Cassandra we presume is alive at this point, we don't know where she's at. Steven Walker is presumed to be alive, we don't know whe[r]e he's at.” RP 851.

at Pippen to go away – “I screamed it loud across the day room many times.”).

Mr. Knox offered a diminished capacity defense. A forensic psychiatrist, Dr. Jerry Larsen, testified that Mr. Knox suffered from bi-polar disorder and major depression. Knox had not been medicated when he was in the jail with Pippen, a very high stress environment. Knox exhibited “tangential” and disorganized thinking, and was highly suggestible, agreeing with others. His speech on the jail recording evidenced nonsensical, non-logical thinking. RP 864-883.<sup>20</sup>

Because most of Pippen’s and Knox’s interactions were not recorded or were recorded on the undisclosed “sketchy” recording, much of the case revolved around the credibility of either Pippen or Knox as to who initiated conversations and under what circumstances Knox may have been led to say anything about hiring Pippen to kill people. While Mr. Pippen did not claim to have an unblemished character, he purported to have offered to help the police because:

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<sup>20</sup> Mr. Knox also called attorney Patricia VanRollins who testified that when she represented Mr. Knox on a license suspension case, his thinking was very confused, he was very susceptible to suggestion, and it was difficult to prevent him from talking to others about his cases. RP 732-50.

I might be a lot of things, but I'm not a murderer. I don't kill nobody. I had to take my dog to the vet to be put down, I couldn't do that. How could I kill somebody else.

RP 608. Pippen also claimed that if he did not do something, "if I allowed that to continue without doing something about it I'm no better than he is."

RP 632.

The State charged Mr. Knox with three counts of solicitation to commit first degree murder. Ex. 3 at 142-44. The jury found Mr. Knox "not guilty" of the counts involving Cassandra Crimmins and Haley Crookshanks, but "guilty" of the count involving Steven Walker. Ex. 3 at 173-75.

**e. *Procedural History of All Three Cases***

All three cases, Nos. 14-1-00095-0, 14-1-01040-8, and 14-1-01283-4 were joined for trial. Although Mr. Knox objected to joinder, Judge Michael Evans denied the motion. RP 8-34; Ex. 1 at 20-23, 26-27. Judge Evans then presided over the jury trial in October of 2015.

Before he became a judge in 2008, Judge Evans had been a criminal defense attorney. In that capacity, in 2006, Judge Evans had represented Mr. Pippen in Cowlitz County Sup. Ct. No. 06-1-00071-1. This case involved domestic violence where Pippen attacked multiple members of his family and destroyed property with, inter alia, a butcher knife, a flashlight, a table leg

and a motor vehicle. Ex. 13 at 268-299. Judge Evans' prior representation of Mr. Pippen was not disclosed to counsel for Mr. Knox nor did Ms. Baer and Mr. Knox know of such representation. Had they known, they would have moved to recuse Judge Evans or would have filed an affidavit of prejudice against him. Ex. 30 at 747-48; Ex. 37 at 777.

Prior to jury selection, the defense moved to dismiss the possession with intent to deliver charge, based on the lack of a corpus delicti for that offense. Ex. 3 at 153-159. Judge Evans denied the motion. RP 317-18.

At the jury trial, Judge Evans did not give the jury an instruction requiring a "true threat" for criminal solicitation – that a reasonable person would foresee that the offer to give money would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another individual.<sup>21</sup> Ms. Baer neither proposed such an instruction nor did she except to the failure to give one. RP 921.

On December 22, 2015, Judge Evans denied two motions for a new trial (one filed by Ms. Baer and one filed by Mr. Knox pro se) and imposed sentence. RP 1081-90. Ms. Baer sought an exceptionally low sentence,

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<sup>21</sup> A copy of the jury instructions given in the consolidated trial can be found at Ex. 1 at 41-78. Instruction No. 32 was the "to convict" instruction for the count involving Mr. Walker, while Instruction No. 26 was the general definition of solicitation. Ex. 1 at 69, 75.

noting Mr. Knox's mental health history. RP 1106-10. Judge Evans denied the request, although saying this about his former client, Otis Pippen: "Mr. Pippen, you know, certainly he has his motives and he has his desires to achieve certain things, and certainly he played a part in this. There was nobody forcing Mr. Knox to say or do the things he did." RP 1122. Judge Evans imposed standard range sentences of 300 months for the solicitation, 156 months for the VUCSA, 80 months for the two VUFAs, and 50 months for the bail jumping. 96 months were enhancements that run consecutively to the 300 months, effectively making the sentence, imposed on someone born in 1955, a life without parole sentence. Ex. 1 at 112-23; Ex. 3 at 176-87.

Mr. Knox appealed both judgments. Mr. Knox's appellate lawyer, Lisa Tabbutt, raised one issue in Mr. Knox's case, a claim that Mr. Knox's public trial rights were violated when the jury listened to the jail recording in a closed courtroom. This Court rejected the arguments in its unpublished decision. Ex. 4 at 190-96.

**f. *Withheld Information***

Because Mr. Pippen was a key witness in the solicitation case, Mr. Knox's lawyer, Ms. Baer, wanted to know about his background so that she

could impeach him at trial. Ex. 30 at 745. In her omnibus request, she specifically asked for all material related to Mr. Pippen and his criminal history. Ex. 3 at 151. In court, Ms. Baer repeated her requests:

And again that would be *Brady* material that would go to the credibility of that witness, and that really is the State's main witness on this case from his contacts with my client in the jail. So in order to be able to fully cross-examine and effectively represent Mr. Knox it would be his constitutional due-process right to have any and all of that information about the person they intend to put on to prove their case of solicitation of murder.

RP 52. The court granted this request, although giving the State the opportunity to come back and limit the extent of disclosure if need be. RP 52; Ex. 3 at 151.

In response to Ms. Baer's requests, on September 16, 2015, the prosecutor (Sean Brittain) sent Ms. Baer an email listing only Pippen's convictions. Ex. 17 at 354. Mr. Brittain also provided Ms. Baer with Pippen's informant "packet," which included the original contract with Pippen when he was initially trying to work off his theft case. Ex. 16 at 346-53. The packet also included various police reports related to the theft case and the now filed drug cases. Mr. Brittain told Ms. Baer something like "this is it," and never tried to limit the scope of Ms. Baer's pretrial requests. Ex. 30 at 746.

Det. B.J. Mortensen also set out Mr. Pippen's criminal history when he described his background as the informant in his police report (which likely was incorporated into the missing affidavit for the intercept).<sup>22</sup> Ex. 5 at 203. Neither Det. Mortensen nor Mr. Brittain relayed any information about Pippen's arrests or other charges that did not lead to convictions (except for the theft case). Ms. Baer relied on the State's disclosure of Pippen's past record when at trial she attacked Pippen's credibility directly. Ex. 30 at 746.<sup>23</sup>

Mr. Knox had known generally about various rumors that Pippen was the subject of prior sex crime investigations and told Mr. Baldwin and Ms. Baer about those investigations. Ex. 38 at 777.<sup>24</sup> However, what Mr. Knox did not know and what the State did not tell either Ms. Baer or Mr. Baldwin is that Longview police *recently* investigated Pippen for two sex offenses – the rape of an adult woman in January 2014, and the molestation of a young girl in January 2015 (which took place after the intercept but before trial). In

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<sup>22</sup> As noted, the intercept application is missing, but Mortensen's report reads like a draft of the application.

<sup>23</sup> In closing, Ms. Baer argued, "Reasonable doubt walked through that door, took that stand and his name was Otis Pippen," RP 991, and then launched into pages of discussion about Pippen's past history and his lies. RP 991-96.

<sup>24</sup> This may be the reason why Mr. Baldwin has a vague memory of some allegations about Pippen. Ex. 32 at 757.

neither case, did the State reveal the allegations to the defense. Ex. 30 at 746-47; Ex. 32 at 757-58; Ex. 38 at 777. Mr. Knox's current counsel only learned of these allegations through PRA requests in the Summer and Fall of 2018. Ex.40 at 793.

In Longview Police Department No. L14-105 and No. L14-107, Det. B.J. Mortensen – Mr. Pippen's handler for his own drug cases in 2014, and one of the main detectives in both the drug and solicitation cases against Mr. Knox – detailed how on January 5, 2014, he investigated a domestic violence case at a group home in Longview. He arrested M.S. for malicious mischief after she allegedly kicked a hole in Mr. Pippen's door. She had been arguing with Pippen either over his laptop or drugs, and had accused him of being a rapist and a "Chimo."<sup>25</sup> M.S. told Det. Mortensen that Mr. Pippen had raped her while she was sleeping. Pippen denied he raped M.S., stating that he did not need to do that because he many other girlfriends. Ex. 18 at 355-76.<sup>26</sup> It is not clear what Det. Mortensen then did with this investigation and whether it ever came up in the following months when Pippen was working for him

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<sup>25</sup> Child molester?

<sup>26</sup> To protect M.S.'s privacy, counsel has redacted M.S.'s name from the police reports.



as an informant.<sup>27</sup> The victim, M.S., was charged and convicted of malicious mischief in Cowlitz County District Court No. CR0140619. Ex. 19 at 377-81. Mr. Pippen was never charged with raping or even assaulting M.S.

Having not been arrested and charged with rape against M.S., and having been given special treatment and released from jail after informing on Mr. Knox, Pippen was soon after accused of molesting a seven-year old girl, "J.E." who lived in his trailer park in Longview ( L15-401, Ex. 20 at 382-418). In January 2015, J.E. reported the molestation to her mother, Cindy E., not long after Mr. Pippen had touched J.E.'s pubic area over clothing when he was over at the trailer watching a movie and the mother was asleep. The police reports note that there had been other sexual misconduct allegations against Pippen including allegations that he molested his grandchildren, although he was never actually charged with these incidents.<sup>28</sup> The

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<sup>27</sup> Det. Mortensen's inaccurate rendition of Pippen's criminal history in his report in this case, Ex. 5 at 203, suggests that Mortensen would have been less than honest revealing Pippen's true history in other cases.

<sup>28</sup> Longview Police Detective Lozano stated:

I told Otis that I am aware of the past allegations against him and shared my concerns. Otis blamed his ex- wife for the allegations involving his grandchildren and said that she was mad at him because he would not have sex with her. Otis denied that he did anything inappropriate to his children or grandchildren.

Ex. 20 at 391-92.

detective's report lists the following case numbers, which are related to these earlier sexual allegations against Mr. Pippen. L94-22714, L96-12852, L02-24837. Ex. 20 at 416.<sup>29</sup>

Although Mr. Pippen denied J.E.'s allegations, in his January 27, 2015 interview at the police station, he admitted that he used to sell drugs to Cindy E. He claimed that he stopped using and selling drugs about a month earlier, though.<sup>30</sup> This admission to the police would mean that Pippen was

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<sup>29</sup> These reports were received recently in response to a PRA request. Ex. 21 at 419-457; Ex. 22 at 458-500. Essentially, throughout the last 20 years, Pippen has been repeatedly accused of molesting young girls in circumstances very similar to his assault on J.E.

There was also some other investigation of Mr. Pippen by the Cowlitz County Sheriff's Office. In response to a recent PRA request, the Longview Police released an email string from January 28, 2015, between Det. Olga Lozano and CCSO Det. Todd McDaniel about some other unspecified complaint against Pippen ("Cold Call"). McDaniel stated that it was a "crappy case because the victim lied about everything," while Lozano sent him the results of the voice stress test she performed and noted that Pippen had passed in the past, despite the difficulties of taking the tests because of his lack of teeth. Ex. 20 at 417-18.

<sup>30</sup> The police report stated:

In brief, Otis acknowledged that he has known Cindy for several years because he used to sell her drugs. He said that he hadn't seen her for several years until recently. According to Otis, Cindy asked him to get her some drugs but he said that he stopped selling and using illegal drugs. I confronted him that according to Spillman police records, he was recently arrested for possession. *Otis said that for the past month or so he has stopped using and selling drugs.* He never confirmed or denied whether he provided Cindy with illegal drugs.

Ex. 20 at 391 (emphasis added)

(continued...)

still using and selling drugs after he was released from the Cowlitz County Jail in October 2014 – after cooperating in the case against Mr. Knox while his own superior case was being continued and continued pending his testimony against Mr. Knox. Ex. 15 at 328-45.

Although the police conducted a forensic interview on January 22, 2015 with J.E. at the Child Justice Advocacy Center (“CJAC”), again no sex charges were filed against Pippen. The police had given Pippen a so-called “voice stress” test which he “passed.” Ex. 20 at 408-09.<sup>31</sup> In light of Pippen passing this unusual test, Det. Lozano did not think there was probable cause:

At this time, I am unable to establish P. C. that Pippen touched [J.E.’s] pubic area with his hand for sexual gratification. I cannot find a motive for [J.E.] to fabricate the story and by all accounts she does not make false reports. There is reason to be concerned with Pippen and the unrelated past allegations; however, at this time charges cannot be supported.

Ex. 20 at 392.

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<sup>30</sup>(...continued)

At Knox’s trial, on re-direct, Pippen admitted he struggled with addiction and continued to do drugs while he was working off his drug contract. He mumbled something about not being able to see his grandchildren. RP 631. He did not testify that he continued to sell drugs even after he was released from jail in October 2014, nor did he state that he could not see his grandchildren because of the allegations of sexual abuse against him (rather than because of his drug problem).

<sup>31</sup> Det. Lozano had given Pippen the same “voice stress” test in 2002 when he had earlier been investigated, but not charged with molesting a neighborhood girl. Ex. 22 at 469, 471-77.

The Cowlitz County Prosecuting Attorney's Office had actual knowledge about these new allegations against Pippen. When the CJAC interview was being set up on January 22, 2015, Detective Lozano emailed Ryan Jurvakainen (who recently became the elected Cowlitz County Prosecuting Attorney), and Tom Ladouceur (the new chief criminal deputy and Mr. Pippen's former lawyer), asking them to attend the interview. Lozano stated in this email that the suspect (Mr. Pippen) had reportedly "admitted to the crime." Ex. 20 at 414. The CJAC form that was attached to the email specifically named Mr. Pippen as the suspect. Ex. 20 at 412, 415.<sup>32</sup>

Mr. Ladouceur – again, Mr. Pippen's lawyer just a few months earlier who knew that Pippen was informing on Mr. Knox – attended the CJAC interview and observed it through glass. Det. Lozano's report explicitly states:

On 1/ 22/ 2015, at approximately 12: 37 hrs, Detective J. D. Johnson, forensic interviewer, met with [redacted] in the child interview room. [Redacted] prefers to be referred to as "[redacted]." *CCDP Tom Ladouceur and I observed the interview via the one-way mirror.* CJAC Director, Christi

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<sup>32</sup> One version of the form was attached to the email and had Mr. Pippen's name redacted, although including the mother's name. Ex. 20 at 414. Another version of the form also received through a PRA request has Mr. Pippen's name on it, but redacts the last name of the mother. Ex. 20 at 412.

Brittain observed portions of the interview, which was audio and video recorded.

Ex. 20 at 388 (emphasis added).<sup>33</sup>

Not only did the State not disclose the allegations of these two sex offenses (the rape of the adult female, M.S.), and the molestation of the seven-year old girl, J.E., to the defense, but the failure to prosecute Pippen for molesting J.E. in particular may have had long-term consequences. J.E.'s mother, Cindy E., exposed her child to other child molesters, who then were prosecuted for their own crimes against J.E. The victim continued to talk about Pippen and what happened, even in the context of these later charges.

Ex. 23 at 503.

The allegations against Pippen for raping M.S., molesting J.E. and other children, and selling and using drugs as late as December 2014 was not the only information withheld from the defense. After he was released from jail in October 2014, Pippen continuously missed court, but routinely either no warrants issued or when warrants were issued, they were quashed. Ex. 15

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<sup>33</sup> Mr. Knox made a request of Jason Laurine (the Cowlitz County deputy prosecutor who, according to the conflict-screen declarations, had final authority in Mr. Knox's cases) to set up a defense interview with Mr. Ladouceur. Mr. Laurine responded by stating that his office would be conflicting out of this matter, and would be sending it to another prosecutor, possibly the Clark County Prosecuting Attorney. Ex. 40 at 794. Accordingly, Mr. Knox has not been able to interview Mr. Ladouceur. It is not clear what prosecuting agency will take over this matter.

at 329-41. Thus, Mr. Pippen was allowed to be loose in the community, despite actual police and prosecutorial knowledge that he continued to buy and sell drugs and continued his history of sexual assaulting vulnerable people. Nothing happened to Pippen for this behavior, and this favorable treatment was not disclosed to the defense. Ex. 30 at 747.

Apart from facts about Mr. Pippen, there at least one other key fact the State did not disclose to defense counsel. One of the issues in the drug case was that Mr. Knox claimed that others used and resided at the motor home at 909 California Way, and that therefore the drugs and guns could have belonged to someone else -- Cassandra Crimmins, in particular. Recent PRA requests have led to the discovery of records that confirmed Cassandra Crimmins' intimate connection with 909 California Way.

After the police arrested Mr. Knox and Mr. Sullivan on January 17, 2014, there were a series of break-ins and thefts at 909 California Way. Ex. 10 at 225-34. While investigating these crimes, Longview police officers found out that Cassandra Crimmins in fact was connected to that property -- while Knox was in jail, the building owner said that Crimmins had shown up to collect her clothing that was stored at the property. Ex. 10 at 229. When asked about her the next month, Knox said that he used to date her and she

wanted to move in with him. Ex. 11 at 238. Although Mr. Knox told his lawyers about this incident, he did not know the name of the officer he spoke to and defense counsel did not obtain the reports; the State did not disclose them either. Ex. 30 at 749; Ex. 32 at 756-67; Ex. 33 at 762; Ex. 37 at 778.

**g. *Conflicts of Interest***

The Cowlitz County Office of Public Defense (“OPD”) and the small number of conflict attorneys that have a contract with it represented many people involved in this case. There was no regular screening mechanism in place at OPD to erect a “wall” between lawyers who may represent people with competing interests. Ex. 32 at 756.<sup>34</sup> Mr. Knox never signed a conflict waiver, and his lawyers never explained to him issues related to joint representation with Mr. Sullivan, in particular. Ms. Baer assumed that all conflict of interest issues had been resolved by the time she got assigned Knox’s cases, and she did not realize that Sullivan had been represented by another attorney in her own office. Ex. 30 at 745, 749; Ex. 38 at 777-78.

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<sup>34</sup> Mr. Baldwin can recall only one case in the many years he was at that office where such a “wall” was erected – in a case where the director represented a person whose dismissed co-defendant had also been represented by the office. Ex. 32 at 756. Whether that one wall would be effective or not is not the issue as there was not a wall erected in any case involving Mr. Knox, Christian Sullivan, Steven Walker, Robert Tubbs or Otis Pippen.

The conflicts included the following:

1. OPD represented Mr. Knox and Mr. Sullivan on the same drug case. Mr. Sullivan's lawyer, Thad Scudder, appeared for Mr. Knox at least at one hearing, Ex. 1 at 127; Ex. 3 at 188, while one of Mr. Knox's lawyers at OPD, Mr. Baldwin, appeared for Mr. Sullivan at one hearing. Ex. 24 at 550; Ex. 25 at 599. Mr. Knox's trial attorney, Simmie Baer, went to the prison and interviewed Mr. Sullivan (her firm's client) and then tried to blame Sullivan for possessing the drugs and guns the State claimed were Knox's. Ex. 3 at 160-63; Ex. 30 at 749-50; RP 361-67. Yet a third person arrested at the scene with Christian Sullivan was charged with VUCSA, Robert Tubbs. His initial lawyer was Ryan Juvakainen, who then withdrew due to a conflict of interest (presumably with Christian Sullivan). Ex. 27 at 645.

2. When Mr. Pippen decided to work with the police against Mr. Knox, his attorney, Tom Ladouceur, was working in the same office as Mr. Knox's attorney, Mr. Baldwin. Both attorneys did not withdraw – only Ladouceur withdrew. Ex. 15 at 323; Ex. 39 at 786-90, Ex. 41. There was no screening within the public defender's office to insure that Ladouceur could not access Mr. Knox's file, nor was there a screening in place to prevent Mr. Knox's lawyers from accessing Mr. Pippen's files after Ladouceur withdrew. Ladouceur was replaced by Bruce Hanify, whose name appeared on the letterhead of OPD during that time that Knox was represented by OPD (even though he likely had left the office by that time). Ex. 32 at 759. Later, Hanify withdrew from representing Pippen, and Mr. Knox's former lawyer, Kevin Blondin, appeared in court for Pippen on at least two occasions before he withdrew. Ex. 15 at 337-39. Blondin also represented Cassandra Crimmins in 2015 in her own arson case, at the time she apparently spoke to Det. Mortensen about taking responsibility of the drugs and guns. Ex. 9 at 222-24; Ex. 12 at 240-267.



3. One of the attorneys at OPD who represented Mr. Pippen, Thomas Ladouceur, became chief criminal deputy when public defender Ryan Jurvakainen (Mr. Tubbs' former lawyer) became the elected prosecutor in Cowlitz County. Ex. 34 at 763-66. Mr. Ladouceur had involvement in not prosecuting his former client, Pippen, for molesting J.E. Ex. 20 at 388, 414. Mr. Jurvakainen's name continued to appear on pleadings filed in Knox's case. Ex. 1 at 13, 14, 28-31, 40; Ex. 3 at 152, 164, 165-66, 167-70, 171-72. When Mr. Ladouceur switched to the prosecutor's office, although he and Mr. Jurvakainen filed screening forms in some of Mr. Knox's files (but not in the VUCSA case where Jurvakainen had represented Mr. Tubbs), no such forms were filed in Mr. Pippen's pending cases. Ex. 15 at 303-45. The Cowlitz County Prosecuting Attorney's Office's own files show no screening mechanisms in place to prevent Ladouceur or Jurvakainen from contact with or involvement in Mr. Pippen's cases. Ex. 36 at 773-74.<sup>35</sup>

4. Steven Walker was represented by Thad Scudder in his 2006 case and by OPD lawyer Richard Suryan from January 2015 to April 2015. Ex. 28 at 679-701; Ex. 29 at 703-09.

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<sup>35</sup> In a November 21, 2018, disclosure the Cowlitz County Prosecuting Attorney's Office disclosed its files related to Mr. Pippen's 2014 case. The face sheet from this file can be found at Ex. 36 at 774. Although it reflects Mr. Ladouceur's withdrawal as Mr. Pippen's lawyer in September 2014, it has no indication that the file was subject to any screening when Mr. Ladouceur became the chief criminal deputy.

### 3. Argument Why Restraint is Unlawful<sup>36</sup>

Mr. Knox's restraint is unlawful under RAP 16.4(c)(2), (3), (5) & (7) for the following reasons:

**CLAIM 1.** Mr. Knox's rights to due process of law under the Fourteenth Amendment to the United States Constitution, article I, section 3, of the Washington Constitution, and *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963), were violated when the State did not disclose to the defense impeachment evidence related to Otis Pippen and exculpatory evidence related to Cassandra Crimmins' connections to 909 California Way. The failure to disclose evidence also violated Mr. Knox's right to confront witnesses guaranteed by the Confrontation Clauses of the Sixth Amendment (as applied to the states through the Due Process and Privilege and Immunities Clauses of the Fourteenth Amendment) and article I, section 22.

**CLAIM 2.** Mr. Knox was denied the right to counsel at trial in violation of the Sixth Amendment to the United States Constitution (as applied to the states through the Due Process and Privilege and Immunities Clauses of the Fourteenth Amendment) and article I, sections 3 and 22 of the

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<sup>36</sup> Mr. Knox is filing a brief along with this PRP. RAP 16.10(a)(1).

Washington Constitution. This denial of the right to counsel is based on two prongs:

A. Multiple actual conflicts of interest in this case adversely affected trial counsel's performance, including the joint representation of Mr. Knox with the "other suspects" in the drug case, Christian Sullivan, and the web of conflicting representation between OPD and conflict attorneys and Mr. Knox, Mr. Tubbs, Mr. Walker, Mr. Pippen and Ms. Crimmins. *See Cuyler v. Sullivan*, 446 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980).

B. Ms. Baer's performance as Mr. Knox's attorney fell below prevailing professional norms and caused Mr. Knox actual prejudice. *See Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The deficient performance and prejudice were caused by Ms. Baer's failure to discover through her own investigation Mr. Pippen's true criminal history, particularly the twenty-year history of allegations of sex offenses continuing until 2015, the failure to discover that Ms. Crimmins stored property at 909 California Way, the failure to move to disqualify the Cowlitz County Prosecuting Attorney's Office, the failure to move to recuse Judge Evans or file an affidavit of prejudice against him, and the failure to propose a "true threat" instruction related to the solicitation charge or except to the

failure to give one. Although Ms. Baer did diligently try to locate Ms. Crimmins before trial, because the trial judge found that she had not used due diligence, Mr. Knox is also claiming that Ms. Baer was ineffective in this regard as well.

**CLAIM 3.** The Cowlitz County Prosecuting Attorney's Office should have been disqualified from this case, and the fact that it prosecuted Mr. Knox violated his right to due process of law, protected by the Fourteenth Amendment and article I, section 3.

**CLAIM 4.** Mr. Knox was denied the right to a neutral judge, in violation of due process, protected by the Fourteenth Amendment and article I, section 3, where the judge in his case had been Mr. Pippen's attorney.

**CLAIM 5.** Mr. Knox's rights to freedom of speech and due process of law, protected by the First and Fourteenth Amendments and article I, sections 3 and 5, were violated by the failure of RCW 9A.28.030 and the jury instructions to include a requirement that Mr. Knox made a "true threat" of bodily harm. Either RCW 9A.28.030 is unconstitutional, or Instruction No. 26 (Ex. 1 at 69) and Instruction No. 32 (Ex. 1 at 75) were erroneous due to their failure to include a "true threat" requirement.

**CLAIM 6.** Mr. Knox's right to due process of law and right to confront witnesses, protected by the Sixth and Fourteenth Amendments and article I, sections 3 and 22, were violated by the State's failure to tie up its impeachment of Knox's testimony when (a) he denied paying Ms. Crimmins \$8000, (b) he denied that Mr. Walker had bought a truck with the money, (c) he denied knowledge of his attorney announcing that Crimmins would be a witness and (d) he denied that Crimmins had failed to appear.

**CLAIM 7.** There was insufficient evidence to sustain a conviction for possession of methamphetamine with intent to deliver, and conviction for that count violated due process of law under the Fourteenth Amendment, article I, section 3, and the protective standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L Ed. 2d 560 (1979).

**CLAIM 8.** Mr. Knox was denied effective assistance of counsel on direct appeal in violation of the due process clauses of the Fourteenth Amendment and article I, section 3, and the right to an appeal and right to effective assistance of counsel for that appeal, protected by the Sixth and Fourteenth Amendments and article I, sections 3 and 22. *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830, 83 L.Ed.2d 821 (1985). Mr. Knox's lawyer should have raised as issues on appeal (1) the lack of a "true threat" instruction and

the ineffectiveness of trial counsel for not proposing one or excepting to the failure to give one, (2) the failure to grant a new trial based upon the discovery of Cassandra Crimmins' declaration and testimony after trial, (3) the State's failure to tie up its impeachment of Mr. Knox, and (4) insufficient evidence to support a conviction for possession of methamphetamine with intent to deliver it.

**CLAIM 9.** The cumulative effect of all of these errors violated Mr. Knox's right to a fair jury trial and due process of law, protected under the Sixth and Fourteenth Amendments and article I, sections 3, 21 and 22, which should result in the vacation of all counts.

**D. REQUEST FOR RELIEF**

Mr. Knox is under restraint as defined by RAP 16.4(a) & (b). The restraint is unlawful because the convictions were entered in violation of the laws and constitutions of Washington and the United States, material facts exist which have not been previously heard which in the interest of justice require vacation of the convictions, there are other grounds for collateral attack and other grounds for challenging the legality of restraint or petitioner. RAP 16.4(c)(2), (3), (5), & (7). Mr. Knox has no other adequate remedies except to file this Personal Restraint Petition. RAP 16.4(d)

## E. STATEMENT OF FINANCES

**F. OATH**

After being first duly sworn, on oath, under penalty of perjury under the laws of the State of Washington, I verify this petition and I depose and say: That, I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

NEIL M. FOX  
WSBA NO. 15277

Notary Public in and for  
the State of Washington, residing at 2912 44th Ave SW Unit A Seattle WA 98116



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11 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
12 DIVISION TWO

13 IN RE THE PERSONAL RESTRAINT OF: }

14 BRADLEY DAVID KNOX, }

15 Petitioner. }

16 CAUSE NO. \_\_\_\_\_

17 CERTIFICATE OF SERVICE  
18  
19

20 I, Alex Fast, certify and declare that I served a copy of the attached PERSONAL  
21 RESTRAINT PETITION by delivering it to a commercial mails service to deposit a copy into  
22 the United States Mail with proper postage attached, addressed to:

23 Ryan Jurvakainen  
24 Cowlitz County Prosecuting Attorney  
25 Jason Laurine, Deputy  
26 312 SW 1st Ave Rm 105  
27 Kelso, WA 98626-1799

28 I certify or declare under penalty of perjury under the laws of the State of Washington  
that the foregoing is true and correct.

DATED THIS 5<sup>th</sup> day of December 2018, in Seattle, Washington.

s/ Alex Fast  
Legal Assistant



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11 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
12 DIVISION TWO

13 IN RE THE PERSONAL RESTRAINT OF: }

14 BRADLEY DAVID KNOX, }

15 Petitioner. }

CAUSE NO. \_\_\_\_\_

CERTIFICATE OF SERVICE

16  
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18  
19 I, Neil M. Fox, certify and declare that I served a copy of the PERSONAL  
20 RESTRAINT PETITION, OPENING BRIEF OF PETITIONER, MOTION TO SEAL  
21 DOCUMENTS, and EXHIBITS IN SUPPORT OF PRP by filing through the Portal, which  
22 will deliver an electronic copy to all parties. I also had these documents served by United  
23 States Mail on December 5, 2018 as indicated in the certificates of service that were filed on  
24 that date in No. 52971-8-II.

25 I certify or declare under penalty of perjury under the laws of the State of Washington  
26 that the foregoing is true and correct.

27 DATED THIS 20<sup>th</sup> day of December 2018, in Seattle, Washington.

28 s/ Neil M. Fox  
WSBA No. 15277  
Attorney for Petitioner

**LAW OFFICE OF NEIL FOX PLLC**

**December 20, 2018 - 9:21 AM**

**Filing Personal Restraint Petition**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** Case Initiation  
**Trial Court Case Title:** State Vs Bradley David Knox  
**Trial Court Case Number:** 14-1-01283-4  
**Trial Court County:** Cowlitz Superior Court  
**Signing Judge:** Michael Evans  
**Judgment Date:** 12/24/2015

**The following documents have been uploaded:**

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- PRP\_Motion\_20181220090901D2625319\_2637.pdf  
This File Contains:  
Motion 2 - Other  
*The Original File Name was Motion to Seal Documents.pdf*
- PRP\_Motion\_20181220090901D2625319\_4658.pdf  
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*The Original File Name was motion to consolidate.pdf*
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Verification by Petitioner  
*The Original File Name was VERIFICATION OF PETITIONER 122018.pdf*

**A copy of the uploaded files will be sent to:**

- Jurvakainen.ryan@co.cowlitz.wa.us
- LaurineJ@co.cowlitz.wa.us

**Comments:**

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SEATTLE, WA, 98121

Phone: 206-728-5440

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Division II  
State of Washington  
12/20/2018 9:21 AM

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

BRADLEY DAVID KNOX,  
Petitioner.

} NO.

} EXHIBITS IN SUPPORT OF PRP

EXHIBITS IN SUPPORT OF PRP

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OF THE EXHIBITS  
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